

## RESOLUTION NO. 01-76

A RESOLUTION ACKNOWLEDGING THAT THE TIGARD 4<sup>TH</sup> OF JULY EVENT IS A CITY OF TIGARD SPONSORED EVENT AND ESTABLISHING THE MODIFIED STANDARD AGREEMENT FORM AS AGREED UPON BY THE CITY OF TIGARD AND 4<sup>TH</sup> OF JULY EVENT ORGANIZERS

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WHEREAS, the City of Tigard Vision Task Force and Action Planning Committee Strategy for Community Character and Quality of Life calls for development of an overall approach for sponsoring community events, including long-standing events and new events, and development of a philosophy for event sponsorship; and

WHEREAS, City of Tigard Resolution No. 00-58 established procedures for City Sponsorship of Community Events; and

WHEREAS, Resolution No. 00-21 established that the Tigard 4<sup>th</sup> of July Event is a City Sponsored Event and the initial amount of funding for this event is \$7,500; and

WHEREAS, on November 20, 2001, the Tigard City Council reviewed the proposed modified standard agreement as attached (Exhibit 1).

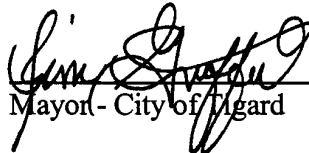
NOW, THEREFORE, BE IT RESOLVED by the Tigard City Council that:

SECTION 1: The Tigard 4<sup>th</sup> of July Event is a City of Tigard sponsored event with the length of sponsorship to be automatically renewed from year-to-year, with a one-year notice to the event organizers should the City decide not to renew funding.

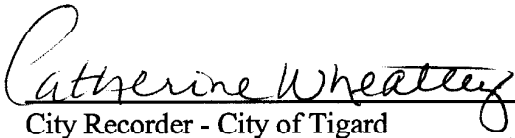
SECTION 2: The Mayor is hereby authorized to sign the agreement attached (Exhibit 1).

SECTION 3: The resolution is effective immediately upon passage.

PASSED: This 18<sup>th</sup> day of December 2001.

  
\_\_\_\_\_  
Mayor - City of Tigard

ATTEST:

  
\_\_\_\_\_  
City Recorder - City of Tigard

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## SPONSORSHIP AGREEMENT

This Sponsorship Agreement (Agreement) is between the City of Tigard, an Oregon municipal corporation ("City") and the **Tigard 4<sup>th</sup> of July, Inc.** ("Organizer").

### RECITALS

- a. Organizer is the planner of the 4<sup>th</sup> of July Fireworks (the "Event") and has asked the City to be a sponsor of the Event. Although open to the public, the Event put on by Organizer is a private event and not an official City event.
- b. City has passed a resolution that provides procedures and policies for City sponsorship of events.
- c. City has passed a resolution that authorized City sponsorship of the Event, subject to execution of this Sponsorship Agreement.
- d. City and Organizer have agreed to the scope of the City sponsorship and the relationship between the City and Organizer as set forth below.

### AGREEMENT

1. This Agreement shall remain in effect until terminated as provided in Section 21 below.
2. The City shall advance monies towards some of the costs to put on the Event. If the Event does not take place in a location allowing viewing of the fireworks in the City of Tigard, a refund shall be paid by the Organizer to the City as specified in this Sponsorship Agreement.
3. City shall make City facilities available for use by Organizer as specified on a map approved by the Public Works Director or his designee.

During the period that Organizer has the right to use these areas, Organizer may exclude others from these areas in order to ensure public safety.

For all other areas Organizer shall have no right to exclude persons or prevent them from engaging in commercial activity.

4. City shall provide the following in-kind services to the Organizer:
  - a. City shall include the Event as a covered event under its general liability policy as provided in Section 10 and 11 below.
5. If the Event does not take place because of weather or other reason outside the control of the Organizer, Organizer shall repay the City the amount paid pursuant to Section 2,

provided, however, that Organizer shall not be required to refund any amount actually expended for the Event before cancellation. In determining whether proceeds from the City have been expended, Organizer shall balance expenditures for the Event against revenue related to the Event, and all excess income up to the total amount contributed to the Organizer by the City shall be used to repay the City on a pro-rata basis when compared to other major contributors to the Event.

If the Event is canceled for any reason, the City shall not provide any in-kind services after the date of cancellation. If the Event is canceled for any reason, the City's facilities shall be available to the Organizer on the same basis that they are available to any other person or entity.

If the main location of the Event moves outside the City limits of the City of Tigard for a given year, the City may terminate or reduce payments and/or the provision of services as it determines appropriate. The termination or reduction shall be decided by the City Council in its sole discretion.

6. Organizer shall identify City as a sponsor of the Event and Organizer shall provide the following rights to City:
  - A. The right to have a booth at the Event, a courtesy tent or host a similar area at the Event at a location designated by Organizer.
  - B. The right to have banners at locations mutually agreed upon by the Organizer and the City. The City would provide banners.
  - C. The right to have additional signs at locations mutually agreed upon by the Organizer. The City would provide signs.
  - D. The right to signage on all courtesy vehicles, if any, used by Organizer in connection with the Event.
  - E. The right to credit (listing the City as a sponsor) in all print advertising placed by Organizer.
  - F. The right to be named in all press releases issued by Organizer.
  - G. The right to be listed in any list of sponsors or to be included in any acknowledgment of sponsors.
  - H. The right to be acknowledged in any official program produced by the Organizer.
  - I. The right to have the city logo displayed on an equal basis with other sponsors.
  - J. The right to use photographs and film of this Event generated by the City, its employees, agents or volunteers.

K. The right to make public address announcements during the Event.

Nothing in the identification of the City as a sponsor shall state or imply that the Organizer is an agent of the City or that the City is responsible in any way for the Event.

7. Food and Beverage Service.

A. Organizer represents and warrants that it will cause all food and beverage vendors to represent and warrant, as a condition of their participation in the Event, that they will comply with all food service, sanitation and other regulations applicable to their services at the Event.

B. No alcohol is served at the Event.

C. Organizer represents and warrants that all music played at the Event, whether live, recorded or publicly broadcast, will be duly licensed for public performance by ASCAP, BMI, SESAC or such other performing rights societies or copyright owners as may be required by law, or else in the public domain. Organizer will indemnify and hold City harmless from and against any liability arising out of the performance of music at the Event.

8. The City and Organizer enter into this Agreement at arms-length and their only relationship is contractual. Neither party is an employee, agent, partner, or co-venturer in relationship to the other. Organizer is and remains an independent entity and has no authority whatsoever to act for the City. Organizer is not an officer, employee or agent of City as those terms are used in ORS 30.265. Organizer's officers, employees and agents are not the officers, employees, or agents of City as those terms are used in ORS 30.265. Organizer, its employees and officers shall not hold themselves out either explicitly or implicitly as officers, employees or agents of City for any purpose whatsoever, nor are they authorized to do so. Organizer shall include a provision that it is not an agent of the City in all contracts it enters into with third parties.

9. Organizer is solely responsible for the organization of the Event and accepts responsibility and liability for all personal injury, property damage, and other damages arising from or related to the Event. The City has no responsibility for the organization or operation of the Event to the extent the liability is not covered in the City's insurance as provided in Section 11. To the fullest extent permitted by law, Organizer agrees to fully indemnify, hold harmless and defend the City, its elected and appointed officials, and employees from and against all claims, damages, losses and expenses incidental to the investigation and defense thereof, based upon or arising out of or incidental to damages or injuries to persons or property, in any way related to the Event, or any activity associated with the Event, except for claims, damages, losses and expenses that are solely attributable to the actions of the City or that are covered by the City's insurance as provided in Section 11. Organizer's agreement to indemnify, hold harmless and defend the City extends to all claims, damages, losses and expenses caused by or alleged

to be caused by the fault or negligence in whole or in part of Organizer's agents, contractors, sub-contractors, employees or any third parties that are in any way related to the Event. Nothing in this paragraph shall be interpreted or applied to reduce or limit in any way the insurance coverage provided by the City under Section 11.

10. Organizer shall include in all Event-related contracts with third parties, if any, a provision requiring the third party to defend, hold harmless, and indemnify the City as to any claim arising from the actions or negligence of the third party and shall include in those contracts a provision requiring the third parties to maintain adequate liability insurance naming the City as an additional insured. Organizer shall require contracts of all third parties that provide food or beverage service, rides or other entertainment at the site and shall require that the insurance cover the type of service or goods provided. Organizer shall provide City with the name, address and phone number of all third parties with which it contracts, a general description of the work the contractor will perform and a copy of each contract.
11. Organizer has chosen to use City property and facilities for the Event based on Organizer's inspection of the property and facilities and determination that the property and facilities are appropriate for the Event. Organizer accepts that the City is not responsible for any defects, imperfections, or lack of suitability of the City property and facilities.

The City agrees to include the Event as an insured activity under its existing liability insurance, workers compensation and other relevant policies. Persons involved in putting on the Event shall be considered volunteers for purposes of insurance coverage.

12. Organizer shall adhere to all applicable federal, state, and local laws, regulations, executive orders and ordinances and obtain all required permits. Required permits may include but are not limited to:

Park Reservation Permit  
Parade Permit  
Food Handler Permits

Fees for permits for the Event may be waived.

13. Notices. All notices required or permitted to be made under this Agreement shall be in writing and shall be deemed to have been duly given when delivered or sent by prepaid certified or registered mail or fax:

If to Organizer, to: \_\_\_\_\_  
(Address) (Fax)

If to City, to: \_\_\_\_\_  
(Address) (Fax)

or such other address as either party may designate in writing to the other party for this purpose.

14. Other Warranties. Organizer represents and warrants that:

- A. Organizer has the full right and legal authority to enter into and fully perform this Agreement in accordance with its terms without violating the rights of any other person;
- B. Organizer's trademarks, if any, do not infringe the trademarks or trade names or other rights of any other person;
- C. Organizer has all government licenses, permits or other authorizations necessary to conduct the Event as contemplated under this Agreement; and
- D. Organizer will comply with all applicable laws, regulations and ordinances pertaining to the promotion and conduct of the Event.
- E. Organizer will ensure that all persons and entities it contracts with to provide services or goods at the Event shall have the knowledge, experience and capacity to provide the goods and services.

15. Records and Reporting

- A. Organizer shall maintain a complete set of financial records relating to the Event in a form acceptable the City's Finance Director. The records must be maintained for at least three years from the date they are generated. Organizer shall permit the authorized representatives of the City to inspect and audit all work, materials, payrolls, books, accounts, and other data and records of Organizer relating to the Event while this Agreement is in effect and for three years after termination of this Agreement. The obligations imposed by this section shall survive termination of this Agreement.
- B. Organizer shall request funding on an annual basis for future years within the City's established budget cycle. The request for funding shall include:
  - i. Financial statements from the previous year's Event.
  - ii. The amount of funds requested and the purpose for which the funds will be used.
  - iii. A list of all other services, facilities, or other benefits, that Organizer is requesting from City.
  - iv. A list of the names, addresses and telephone numbers of all other sponsors of the Event.

- C. Failure to comply with subsections A or B of this section shall constitute cause for termination of this Agreement by the City.
16. **Governing Law and Consent to Jurisdiction.** This Agreement is subject to and shall be construed in accordance with the laws of the State of Oregon, except for choice of law provisions. City and Organizer both consent to jurisdiction in the state and federal courts located in Oregon. Organizer shall comply with the clauses required in every public contract entered into in the State of Oregon as set forth in ORS 279.312, 279.314, 279.316 and 279.320, which are hereby incorporated by reference.
  17. **Non-Assignment.** Neither party shall assign this Agreement without the prior written approval of the other party, except that City may assign this Agreement to any successor entity.
  18. **Complete Agreement.** This Agreement represents the entire agreement between the parties and supersedes all other agreements, if any, express or implied, whether written or oral. Organizer has made and makes no representations of any kind except those specifically set forth herein.
  19. **Binding Agreement.** This Agreement shall be binding upon the parties, their successors and assigns.
  20. If any provision of this Agreement is held to be invalid, void or unenforceable by a court of competent jurisdiction, either party may, within 30 days of the court decision, request that the parties meet to negotiate an amendment to compensate for the loss of the provision declared invalid, void or unenforceable. If the provision declared invalid, void or unenforceable is one that this Agreement provides is not severable, the parties shall meet as soon as possible to attempt to renegotiate this Agreement. If after good faith efforts to renegotiate the Agreement the parties cannot agree on an amendment, either party may declare the Agreement terminated. In that event, all obligations intended to survive termination, including indemnification obligations and records inspection requirements, shall remain effective but the Agreement shall be otherwise terminated. In the event of termination under this provision, any payments made by the City to Organizer shall be refunded, except that Organizer shall not be required to refund any amount actually expended for the Event. In the event that neither party requests renegotiation within 30 days and the provision declared void, invalid or unenforceable is not one that the Agreement provides is non-severable, the Agreement shall remain in effect except for the provision declared invalid, void or unenforceable.
  21. This Agreement may be terminated by mutual agreement of the parties. The City may terminate this Agreement for no reason by providing notice of termination one year prior to termination. The Organizer may terminate this Agreement up to three months prior to the Event for no reason and all funds advanced by the City to the Organizer shall be returned to the City. Either party may terminate this Agreement for default by providing 30 days' notice. If the other party may cure the default and does so within 30 days, the Agreement shall not terminate. City may terminate this Agreement without notice by

vote of the City Council if the City Council determines that it is in the public interest to do so. Any breach of this Agreement shall be considered a default. The indemnification provisions shall survive termination.

22. Except for those responsibilities expressly reserved to the City Council, all rights and duties of the City may be exercised by the City Manager or designee.

ORGANIZER

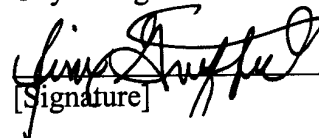
\_\_\_\_\_  
[Name]

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Date]

SPONSOR

James Griffith, Mayor  
\_\_\_\_\_  
City of Tigard

  
\_\_\_\_\_  
[Signature]

December 18, 2001  
\_\_\_\_\_  
[Date]

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